



Comptroller General
of the United States

Washington, D.C. 20548

Wolcott
143469

Decision

Matter of: Quantum Research, Inc.

File: B-242020

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DIGEST

1. Protester was reasonably on notice that its proposed use of extended work weeks for professional employees would be considered by the agency in evaluating its proposal.

2. Agency reasonably concluded that protester's proposal based on employees working 2,600 hours per year created risk regarding the stability of protester's work force, and degraded the quality of the technical product.

3. Agency reasonably determined that higher priced, technically superior proposal provided the best value to the government where contractor's performance will directly affect up to \$15 billion worth of resources in other government programs and procurements.

DECISION

Quantum Research, Inc. (QRI) protests the Department of the Army's award of a cost-reimbursement contract to CAS, Incorporated under request for proposals (RFP) No. DAAH01-90-R-A207. The RFP was issued as a competitive small business set-aside by the U.S. Army Missile Command (MICOM), Redstone Arsenal, Alabama. QRI asserts that the Army improperly downgraded its proposal because of QRI's proposed use of extended work weeks for its professional employees.

We deny the protest in part and dismiss it in part.

BACKGROUND

On April 6, 1990, the Army issued RFP No. DAAH01-90-R-A207 which sought 1,425,275 direct labor manhours to provide engineering and technical assistance services to support the government's tactical missile defense effort. The RFP stated that the contractor will assist in preparing and maintaining an overall integrated tactical missile defense plan. In performing the necessary tasks, the contractor will make recommendations regarding trade-offs in using and deploying up to \$15 billion worth of government resources.^{1/}

The RFP instructed offerors to submit proposals addressing technical, cost, management and facilities/security factors. Because the Army believed that a superior technical product would have a significant cost impact on other aspects of the government's missile defense effort, the RFP provided that technical factors were more important than cost factors. Cost factors were, in turn, more important than management factors.^{2/} The RFP stated that an adjectival rating system would be used to evaluate technical and management factors and that cost factors would be evaluated on the basis of "most probable cost." The RFP provided that award would be made to the offeror whose proposal was expected to provide the best value to the government.

The RFP identified five major performance areas in which offerors' technical approach would be evaluated: (1) Command, Control, Communications and Intelligence (C3I); (2) Integration and Balancing Analysis; (3) Attack Operations; (4) Active Defense; and (5) Passive Defense. The RFP stated that C3I was the most important performance area; that Integration and Balancing Analysis was slightly less important; and that Attack Operations, Active Defense and Passive Defense were equally important, but much less important than C3I.^{3/} The RFP did not provide that extended work weeks would be a basis for evaluation, but stated that an offeror's technical

^{1/} For example, the contractor may assist in evaluating the optimal cost/benefit trade-off between deploying Patriot Fire Units to destroy incoming missiles and using F-15 bombers to destroy enemy missile launchers.

^{2/} Although not disclosed to the offerors, technical factors were weighted at 70 percent, cost factors at 20 percent and management factors at 10 percent. The RFP advised offerors that facilities/security factors would be evaluated on a "go/no-go" basis.

^{3/} Each of the five performance areas were further divided into nine sub-elements with varying evaluation weights attached.

proposal would be evaluated as to the "quality of personnel proposed" and the "adequacy and acceptability of the offeror's proposed concept to competently manage and provide the required [services]."

On June 18, 1990, MICOM received four offers including those of CAS and QRI. By letter dated July 24, MICOM sought clarifications from each offeror, stating:

"It is requested that you provide the number of hours your technical proposal assumes each employee will work per year in order to more fully understand and evaluate your technical approach to the performance of the contract. The yearly hours should include all hours worked while in your employ including this effort and all other efforts and should include all compensated and uncompensated hours."

All offerors responded to this request. QRI's response indicated that its proposal was based on a 2,600-hour work year for nearly all of the professional employees proposed. CAS' response showed that the majority of its professional employees were scheduled to work between 2,200 and 2,300 hours per year.

On August 30, 1990, written discussions were conducted. Each offeror was given a list of questions regarding its proposal and advised that failure to adequately respond could negatively affect its proposal evaluation. Included in the questions directed to QRI was the following:

"Your firm/team proposed the use of extended work weeks for employees. Please discuss why you believe that your use of extended work weeks for personnel proposed on this contract is an effective management technique and that it does not degrade the quality of the technical product. MANAGEMENT AND TECHNICAL, answer in MANAGEMENT."

In response, QRI defended its proposed use of extended work weeks stating that it believed this mechanism enabled it to perform more effectively. QRI referenced its contract performance on other government contracts during its 3-year history asserting that it had successfully relied on the type of extended work weeks it proposed for this contract.

In evaluating proposals, the Army was concerned by the fact that award of this contract to QRI would more than double the size of its existing work force. The Army concluded that particularly in view of this anticipated expansion, QRI's proposed reliance on a 2,600-hour work year for most

professional employees created a risk regarding the stability of QRI's work force. The Army also determined that the extended work week QRI proposed could be expected to adversely affect the quality of the product QRI delivered. The Army evaluated QRI's technical and management proposals to be "acceptable," but determined that the extended work weeks proposed constituted a disadvantage with regard to technical and management factors.

In evaluating CAS' technical and management proposals, the Army similarly considered the work week CAS proposed for its employees. The Army concluded that CAS' much more limited reliance on extended work weeks did not constitute a disadvantage and rated CAS' technical and management proposals as "good." On September 25, 1990, the Source Selection Authority determined that CAS' proposal offered the best value to the government and selected CAS for contract award.

QRI protests that: (1) the Army improperly relied on an evaluation factor not stated in the proposal; (2) the Army unreasonably determined that QRI's proposed use of extended work weeks was disadvantageous; (3) the Army arbitrarily concluded that CAS' proposal would result in the "best value" to the government; (4) QRI was prejudiced by an evaluation error the Army acknowledges it made; and (5) CAS should not have received the award due to a conflict of interest.

EVALUATION FACTORS

QRI first asserts that because the solicitation did not specifically state that utilization of extended work weeks would be an evaluation factor, the Army was precluded from considering this factor in its evaluation. QRI also argues that the final notation on the Army's letter of August 30, "MANAGEMENT AND TECHNICAL, answer in MANAGEMENT," led QRI to believe the Army's consideration of extended work weeks would be limited to its evaluation of management proposals.

The Army responds that the RFP expressly advised offerors that technical proposals would be evaluated on the basis of the quality of the product offered and the efficiency with which the manhours would be performed, and that management proposals would be evaluated on the effectiveness of the management methods proposed. The Army notes that its correspondence to QRI on July 24, specifically requested information regarding extended work weeks in order to "more fully . . . evaluate [QRI's] technical approach." Similarly, the Army's letter to QRI on August 30, asked QRI to discuss why it believed its use of extended work weeks "d[id] not degrade the quality of the technical product." Regarding the notation at the end of the question posed on August 30, the Army responds that the words "TECHNICAL AND MANAGEMENT" indicated the answer was relevant

to both portions of the proposal and the direction to "answer in MANAGEMENT" was given to prevent redundant responses.

Procuring agencies must give sufficient detail in solicitations to allow offerors to intelligently prepare their proposals and compete on an equal basis. See, e.g., GP Taurio Inc., B-238420; B-238420.2, May 24, 1990, 90-1 CPD ¶ 497. However, agencies are not required to list all subfactors which may be used for evaluation purposes so long as those subfactors are reasonably related to the RFP's stated evaluation criteria. Id.; Harris Corp., B-235126, Aug. 8, 1989, 89-2 CPD ¶ 113; Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21.

Section M of the RFP expressly advised offerors that their technical proposals would be evaluated on the basis of the quality of the personnel proposed and the concept proposed for providing the required services. The RFP also provided that management proposals would be evaluated on the effectiveness of the management method proposed. Based on these explicit evaluation factors and the unambiguous advice provided in the Army's July 24 and August 30 correspondence, we conclude that the Army's consideration of extended work weeks was within the scope of the stated evaluation criteria, and that QRI was made fully aware that both its technical and management proposals would be evaluated on the basis of the extended work weeks it proposed. Accordingly, we find no basis to question the Army's consideration of the perceived effect of extended work weeks in evaluating technical and management proposals.

REASONABLENESS OF EVALUATION

QRI next asserts that the Army unreasonably determined QRI's proposal was disadvantageous because of QRI's reliance on extended work weeks. QRI asserts that its prior successful use of extended work weeks on other contracts provided "positive and substantial evidence" that its use of extended work weeks under this contract would not degrade the quality of the product delivered.

The Army responds that it considered the fact that QRI would have to more than double the size of its work force if it were awarded this contract. The Army concluded that QRI's proposal to use employees working 50 hours per week (2,600 hours per year divided by 52 weeks) over the potential 5 year performance period of this contract could have a negative effect on QRI's ability to attract and maintain a stable, experienced work force and that such instability could degrade the quality of the product delivered. The Army states further that its determinations regarding the impact of extended work weeks also took into consideration research conducted by the Chairman of the Source Selection Evaluation Board (SSEB) from

which he concluded that employees are less likely to remain creative, effective and decisive if they work 50 hours or more per week for a period in excess of 2 months. Based on these considerations, the Army determined that QRI's reliance on employees working 50 hour weeks over the life of this contract could be expected to degrade the quality of the technical product delivered.^{4/}

In reviewing protests of allegedly improper evaluations, our Office will not substitute its judgment for that of the agency's evaluators, but rather will examine the record to determine whether the agency's judgment was reasonable and in accordance with the evaluation criteria. See, e.g., Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. A protester's disagreement with the agency's evaluation is itself insufficient to establish that the agency acted unreasonably. Id.

We find that the Army reasonably concluded that QRI's substantial reliance on employees working 2,600 hours per year created a risk with regard to QRI's ability to double the size of its work force and to retain new and existing employees. Consideration of risk created by an offeror's approach to performing required tasks is properly considered in the evaluation of technical proposals. Modern Technologies Corp., Scientific Sys. Co., B-236961.4; B-236961.5, Mar. 19, 1990, 90-1 CPD ¶ 301. We also find reasonable the Army's determination that the product QRI offered, that is, manhours performed by employees working 50 hours per week, was less advantageous than it would have been had QRI chosen not to propose this level of extended work weeks. See Wheeler Indus., Inc., B-230972, B-230972.2, Aug. 16, 1988, 88-2 CPD ¶ 150; see also, Public Law No. 101-510, 104 Stat. 1613 (1990) (legislation requiring the Department of Defense to issue regulations ensuring that proposals are evaluated on a

^{4/} QRI also argues that the Army should have evaluated its proposal on the basis of 44 hours per week rather than 50, because its employees are entitled to 360 hours per year (an average of approximately 6 hours per week) of "non-productive" time (vacation and sick leave, holidays, and excused time for reserves, jury duty, etc.). QRI's argument assumes its employees will use "non-productive" hours at a uniform rate each week throughout the year. We find this assumption unrealistic. Further, the Army did not adjust its evaluation of any offerors' proposals on the basis of the number of "non-productive" hours the proposed work included. We conclude it was reasonable for the Army to evaluate QRI's offer on the basis of the 50 hour week indicated in its proposal.

basis that does not encourage mandatory uncompensated overtime.)

BEST VALUE DETERMINATION

QRI asserts that the government's determination that CAS's higher priced proposal constituted the best value to the government was "spurious and without any reasonable basis." We disagree.

The RFP stated that award would be made to the source whose proposal had the highest degree of realism and credibility and whose performance was expected to best meet the government objectives "at a cost which provides the best value to the government." The RFP established that the offerors' most probable costs would be considered in determining the proposal which offered the best value to the government.

In order to evaluate most probable cost, offerors were asked to provide gross yearly salaries, with escalation adjustments, for the employees they proposed. The Army's calculation of both QRI's and CAS's most probable costs were virtually identical to the total costs stated in the two offerors' proposals.^{5/} While QRI objects to the Army's best value determination, it is clear QRI was not adversely affected by the Army's actual calculation of the offerors' most probable costs.

In making the cost/technical tradeoff, the Army gave considerably greater weight to technical factors, consistent with the RFP evaluation criteria, because of the overall cost impact a technically superior proposal was expected to have on other government programs and procurements. The Army concluded that the advantages to be realized from CAS's technically superior proposal outweighed QRI's cost advantage.

An agency's cost/technical tradeoffs may be made subject only to the test of rationality and consistency with the established evaluation factors. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430. Where a procuring agency reasonably determines that the technical superiority of one proposal is sufficiently significant to outweigh the cost difference, there is no basis to overturn that determination. Id.; Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.

^{5/} The Army determined QRI's most probable cost to be \$44,602,466 based on QRI's offered cost of \$44,820,600. The Army calculated CAS's most probable cost to be \$56,027,235, based on its offer of \$54,850,603.

QRI's only real basis for objection to the cost/technical tradeoff is its assertion that its proposal provided a specific cost advantage of approximately \$11 million. However, the RFP did not require award to the low cost offeror. We conclude that the record supports the Army's determination that the technical merit of CAS' proposal outweighed its higher cost. Performance of this contract will influence other government programs and procurements involving up to \$15 billion worth of resources. CAS' superior technical performance may result in savings to the government considerably in excess of the amount the government would save by awarding the contract to QRI. Under these circumstances, we find no basis to challenge the Army's determination that CAS's proposal offered the best value to the government. See Suncoast Scientific, Inc., B-239614, Sept. 14, 1990, 90-? CPD ¶ 211.

THE ARMY'S EVALUATION ERROR

At a debriefing following contract award, the Army's Source Selection Authority (SSA) advised QRI that its technical proposal had been downgraded in one of the nine sub-elements under the performance area of Active Defense.^{6/} The SSA stated that QRI was downgraded because it had failed to respond to the Army's request for clarification of this sub-element. At the debriefing, QRI denied that clarification of this sub-element had been sought and, upon review, the SSA determined that the Army had inadvertently omitted reference to this sub-element in its request for clarification. Accordingly, the SSA acknowledged that QRI's proposal should not have been downgraded in this sub-element. However, upon further review of the evaluation documentation, the SSA concluded that, even if QRI had received the highest rating in this sub-element, its overall rating of "acceptable" for this performance area would not have changed.

QRI challenges the SSA's determination in this regard. QRI asserts that the SSA's conclusion was "totally inconsistent with an 'adjectival' evaluation scheme" and "clearly evidences the arbitrary nature of the evaluation process."

The Army responds that the SSA was intimately familiar with the evaluation process, had the evaluation documents available at the debriefing and, thus, was able to give the protester this immediate assessment. The Army argues that, in any event, a source selection authority is not bound by the

^{6/} Active Defense, Passive Defense and Attack Operations were performance areas equal in weight and the least important of the five performance areas.

recommendations of a technical evaluation panel and is authorized to make its own determinations regarding the source selection decision. Honeywell, Inc., B-238184, Apr. 30, 1990, 90-1 CPD ¶ 435; TRW Inc., B-234558.2, Dec. 18, 1989, 89-2 CPD ¶ 560.


We have carefully reviewed the ratings QRI received in the other eight sub-elements of the performance area Active Defense. We have compared those ratings to similar combinations of ratings made by the Army in this procurement. We find reasonable the SSA's determination that the Army's acknowledged error did not affect the overall evaluation of QRI.

CONFLICT OF INTEREST

In commenting on the agency report, QRI, for the first time, asserted the existence of a conflict of interest between CAS and the Army based on previous work which CAS has performed for the Joint Tactical Missile Defense Office (JTMDO). In raising this allegation, QRI indicates that at the time it filed its initial protest it knew CAS had provided contractual support for the JTMDO, but asserts that it "was not aware until recently the extent of such services." QRI does not further indicate when it obtained the information on which this allegation is based.

Under our Bid Protest Regulations, a protest must be filed within 10 working days of the time the basis for the protest was known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990). Where, as here, a protester supplements a timely protest with new and independent grounds for protest, the later raised allegations must independently satisfy the timeliness requirements. Golden Triangle Management Group, Inc., B-234790, July 10, 1989, 89-2 CPD ¶ 26. Further, a protester has the obligation to provide information establishing the timeliness of its protest when on its face the protest otherwise appears untimely. Federal Computer Corp.-Recon., B-239842.3, Oct. 17, 1990, 90-2 CPD ¶ 304. Based on the information presented, QRI did not raise this new contention within 10 days after it knew or should have known of the basis for protest. Consequently, this issue is untimely and will not be considered.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel